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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No.

LAWRENCE LEWIS,

Petitioner,

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Lawrence Lewis, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above-entitled case on April 5, 1967.

CITATIONS TO OPINIONS BELOW

Ninth Circuit. The opinion of the Court of Appeals of April 5, 1967 is not reported at this date but is set forth in Appendix A, infra, page 13.

District Court. The findings of fact and conclusions of law relating to motions to suppress evidence and the order of the district court denying petitioner's motion to suppress (No. 35814-SD) are set forth in Appendix C, infra, page 25.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on April 5, 1967, and is set forth in Appendix B, infra, page 23. The jurisdiction of this Court is invoked under 28 U. S. Code, section 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence used against the petitioner in the federal prosecution was obtained in violation of his rights under the Constitution of the United States.

2. Where an informant for the government drives a vehicle across an international border, which vehicle is not inspected at the border though stopped, then proceeds to a garage 5-6 miles from the border where he, the informant, meets with various government agents, then proceeds to an alleged rendezvous with petitioner 8-10 miles from the garage, has there been a violation

of petitioner's rights under the Constitution, where petitioner is charged with unlawful importation, where there has been a search of the vehicle without a warrant, the agent searched the vehicle without probable cause and the time, distance from the border and previous interception of the vehicle prevented the search from being classified as a border search?

STATUTES INVOLVED

The statutory provision involved here is Title 21, U. S. C. Section 174. This statute is set out verbatim in Appendix D, infra, page 33.

STATEMENT

Petitioner was tried under the one-count indictment which alleged that petitioner Lewis knowingly concealed, and facilitated the transportation and concealment of, approximately six ounces of cocaine and one ounce of heroin, narcotic drugs, which as he then and there well knew, had been imported and brought into the United States contrary to law. (C. T. 2.) [Reference to the Clerk's transcript are hereinafter designated C. T., and references to the Reporter's Transcript are hereinafter designated R. T.]

Subsequent to the indictment there was a motion to suppress evidence obtained by illegal arrest and illegal search and seizure filed on December 21, 1965, said motion was heard on January 31, 1966 and denied as to petitioner.

Jury trial of petitioner commenced on February 1, 1966, before United States District Judge James M. Carter (R. T. 2). Petitioner was found guilty as charged on February 2, 1966 (R. T. 218-19).

On March 7, 1966, petitioner Lewis was sentenced to seven years in prison.

Petitioner filed a timely notice of appeal (C. T. 17-18). An appeal duly followed to the Court of Appeals for the Ninth Circuit, which court affirmed the judgment of the District Court as to appellant Lewis. This petition seeks review of the court's action in denying the relief sought by appeal.

The evidence adduced as to petitioner during the trial was as follows:

Government agents received a tip from an informant that certain narcotic drugs would be brought into the San Diego area by a person driving a 1955 Ford Station Wagon. Acting on said tip, Government agents stopped the 1955 Ford Station Wagon at the border but did not inspect it at that time. The 1955 Ford Station Wagon was followed into San Diego. While following the 1955 Ford Station Wagon, Government agents noticed a 1963 Buick automobile following the 1955 Ford Station Wagon, said Buick automobile containing the petitioner Lawrence Lewis and one Louise Lee. The 1955 Ford Station Wagon was driven to a garage in Chula Vista where it was parked and the driver conversed with the Government agents. The 1955 Ford Station Wagon was allowed to proceed to the Logan Heights area of San Diego where it was parked at approximately 43rd and Oceanview. Its

occupant got out and left the automobile. The 1963 Buick automobile stopped and petitioner Lawrence Lewis left the 1963 Buick automobile and entered the 1955 Ford Station Wagon. Mr. Lewis then drove off in the 1955 Ford Station Wagon.

A Government agent tailing the 1955 Ford Station Wagon stopped it after it had been driven a few blocks and the petitioner was taken into custody. Subsequently, the 1955 Ford Station Wagon was searched and was found to contain a quantity of narcotic drugs.

REASONS FOR GRANTING THE WRIT

The Constitutional Rights of petitioner Lewis were violated by the admission of evidence obtained by a Customs Officer purportedly having reasonable grounds to believe that the car in question contained narcotics upon crossing the international border. Had there been an inspection of the automobile at the international border, and a constant surveillance from that point, no question would be raised concerning the reasonable grounds to believe narcotics were in the vehicle. From the evidence, it is clear that not only had the vehicle not been inspected, but it stopped for a period in Chula Vista on the United States side of the border. It is no flight of fancy to presume that the narcotics later found in the vehicle could have been placed there in Chula Vista.

The United States Customs Agent Ellis had received word from the informant Sandoval, but the Agent Ellis failed to obtain a warrant of search though he had

an opportunity to acquire the warrant. On the word of Agent Ellis one Samaduroff, a Customs Agent, followed the automobile into San Diego. After the petitioner Lewis picked up the automobile, an arrest was made. Petitioner's rights, under the Fourth Amendment to the Constitution, were violated at that moment. There was a search and seizure made incident to an unlawful arrest.

Prior to the observation of the 1963 Buick automobile on the United States side of the border, the Customs Agents were unaware of the presence of petitioner Lewis in the area. No evidence was shown which substantiated any view that the Customs Agents observed the 1963 Buick automobile crossing the international border. Therefore, as to petitioner Lewis, who was an occupant of the 1963 Buick automobile, there was no connection with the 1955 Ford Station Wagon. Not until the Customs Agent observed the Buick tailing the Ford, did any connection become apparent. If Agent Samaduroff made an arrest of petitioner Lewis, it was not on any reasonable grounds based on information received from the informant Sandoval. Sandoval did not testify that he knew petitioner, or had ever seen him before. There was therefore, no probable cause to arrest petitioner Lewis.

As to the automobile, if there were a probable cause for search at the border, that reason ceased to exist after the 1955 Ford had stopped in Chula Vista in a garage. The later found narcotics could have been placed in the vehicle at that time. The chain had been broken. Search of an automobile without warrant and without probable cause is illegal. 19 U. S. C. A. Sections 496, 497, U. S. v. Kaplan, 47 F. 2d 587. The petitioner's

rights under the Constitution had been violated and the Court below erred in not having reversed the order of the District Court which denied petitioner's motion to suppress based on an illegal search and seizure.

The Court of Appeals erred in affirming the judgment below because without reasonable grounds for the search and seizure, there was no valid grounds for the arrest. The contention that there was a valid border search, where neither warrant nor probable cause is necessary, is untenable. Again petitioner Lewis' Constitutional Rights had been violated. To constitute a valid border search, it is conceded that the search need not be made at or near the immediate vicinity of the point of the international border crossing. However, it was stated succinctly in Alexander v. United States of America, 362 F. 2d 379 (1966), that the

> "Legality of search must be tested by determination (of) whether (the) totality of surrounding circumstances, including time and distance elapsed as well as manner and extent of surveillance are such as to convince (the) factfinder with reasonable certainty that any contraband which might be found in or on vehicle at time of search was aboard (the) vehicle at (the)time of entry into jurisdiction of United States".

In all of the cases which support the theory of valid border search, the individual arrested was the individual observed crossing the border in the vehicle. Here petitioner Lewis was not even observed crossing the

border.

Furthermore, border searches are not exempt from the constitutional test of reasonableness. U. S. Const Amend IV; U. S. v. Yee Ngee How, 105 F. Supp. 517, 519, et seq. It was stated in Carroll v. U. S. (1925), 267 U. S. 132, 154, 45 S. Ct. 280, 285, 69 L. Ed. 543.

> "Travelers may be so stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in and his belongings as effects which may be lawfully brought in. But those lawfully within the country entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, (and there is) probable cause for believing that their vehicles are carrying contraband or illegal merchandise."

There was no known connection between the suspected vehicle and the petitioner, even at the time of the arrest. If there existed probable cause for the search of the vehicle, and this point is bitterly contested, the person of the petitioner heretofore unconnected with the vehicle could not be searched, and any evidence obtained from the vehicle should have been suppressed as to petitioner Lewis.

Finally, as it was stated in Marsh v. U. S. of A., 344 F. 2d 317 (1965), where a search conducted 63 miles

from the border was held to be illegal,

> "... if the government seeks to qualify the action as a geographically 'extended' border search, it must show at least the circumstances known to the officers at the border which reasonably justified the request relayed to officers in the interior. Any other doctrine would render travelers who had recently entered this country subject to almost unlimited arrest and search without any cause save the simple request of a border officer to one at an interior point".

The case here for protection of petitioner's Constitutional Rights under the Fourth Amendment is stronger. If the order denying the motion to suppress was correctly affirmed on appeal, theoretically any individual crossing the border with or without knowledge of the contents of the car, who had any connection with said 1955 Ford Station Wagon, could be indicted under 21 U. S. C., 174.

We urge the Court to examine the decisions relating to the border search without probable cause and note carefully the distinguishing factors in the present petition. The Court's refusal to reverse the order denying the motion to suppress resulted in a violation of petitioner's Constitutional Rights and permitted the admission of evidence under an illegal search and seizure.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

ROBERT A. WARD

Counsel for Petitioner,
Lawrence Lewis